**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 623 OF 2005**

**WITH**

**CIVIL APPLICATION NO. 1366 OF 2005**

Vinaykumar D. Singh ..Appellant

versus

The Municipal Corporation of

Greater Bombay ..Respondents

Mr. M. R. Yadav for the Appellant.

Mr. J. J. Xavier for the Respondents.

**CORAM : D. G. DESHPANDE,J.**

**DATE : 17TH AUGUST, 2005**

**ORAL ORDER :**

1. Heard.

2. This appeal is filed by the original plaintiff against dismissal of his suit. Counsel for the plaintiff - appellant contended that the suit structure was censused. He has referred to a document dated 2.12.1978 issued by the Tahsildar (Enc) Borivali to the plaintiff. The Counsel for the MCGM was asked to verify whether the structure

was censused. Today, on the basis of the record available with him, he made a statement that the structure originally was a kacha structure. It was censused in the name of Mohammed Ali M. Khan Faruq Khan. But now as per the notice under Section 351 it was a newly constructed structure and therefore it was illegal.

3. The report of the Deputy Collector (Enc) also shows that the name of the owner of the structure does not tally with the original name. This report is dated 1.2.2000.

4. Counsel for the appellant contends that this document was not made available to them in the lower court by the respondents. But if this document is there then the only dispute that remains is change in the nature of material used for reconstruction because the area of the original structure is same. Only it is converted from kacha to pacca structure and therefore the appellant may be permitted to move the MCGM for regularisation subject to their rules in that regard.

5. In view of this suggestion, the appellant is permitted to apply to the MCGM for regularisation of the structure. He will file such an application within two weeks from today along with all the

necessary documents. He may refer to this document dated 1.12.2002, a copy of which can be given to the appellant by the Counsel for the MCGM. If such an application is made by the appellant, the Authorities of the MCGM shall decide it within two months without being influenced in any manner whatsoever by the judgment of the dismissal of the suit on merits. In the meantime MCGM not to take any action.

6. If the appellant did not apply within the stipulated period, this opportunity given shall stand cancelled.

7. In view of this, the appeal is disposed of along with the Civil application.

8. Certified copy expedited.

17.8.2005 (D.G. DESHPANDE, J.)